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DEPARTMENT FOR EUR(DICARLO), EUR/SCE(HOH/FOOKS); NSC FOR BRAUN; OSD FOR BIEN

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SUBJECT: BOSNIA - PEACE IMPLEMENTATION COUNCIL DECIDES TO KEEP OHR OPEN

REF: A. SARAJEVO 362

¶B. SARAJEVO 348
¶C. SARAJEVO 331

Classified By: Ambassador Charles English. Reason 1.4(b) and (d).

¶1. (C) SUMMARY: On February 26-27, the Peace Implementation Council (PIC) met in Brussels to discuss the future of the Office of the High Representative (OHR). PIC members agreed that the political situation in Bosnia had deteriorated since their October 2007 meeting and expressed concern about attempts, particularly by the Republika Srpska (RS), to roll back previous reforms. In that context, PIC members decided OHR should remain open. The PIC also adopted two conditions and five objectives that would need to be met before closure.

PIC members discussed the February 21 RS National Assembly (RSNA) resolution asserting an RS right to self-determination. Several PIC participants criticized the resolution as anti-Dayton and unconstitutional during the course of discussion, but the Russian delegation -- under instructions from Moscow -- blocked explicit reference to it in the communique. With HighRep Lajcak and other delegations arguing that a unanimous communique was the priority, the PIC settled on a less contentious formulation. OHR reported on progress on war crimes issues, and the Principal Deputy High Representative outlined measures necessary to ensure the Brcko Final Award is fully implemented and supervision ended.

RS PM Milorad Dodik's presentation to the PIC was subdued relative to his pre-PIC rhetoric. However, in an interview just one day after the PIC, Dodik again threatened the RS would secede if certain conditions were not met. EUR DAS Rosemary DiCarlo headed the U.S. delegation. She has clear this message. END SUMMARY

PIC Endorses Keeping OHR Open

¶2. (U) At its February 26-27 meeting in Brussels, the PIC endorsed the HighRep's recommendation that OHR should remain open beyond June 2008. PIC delegations were unanimous in expressing their concern at the lack of progress on reform and continued nationalist rhetoric, including attacks on Dayton, by Bosnian politicians over the past several months. Under these circumstances, the PIC agreed OHR must continue.

The PIC agreed that two conditions must be fulfilled prior to OHR's transition to the Office of the European Union Special Representative (EUSR): 1) Positive assessment by the PIC of the situation in Bosnia based on "full compliance" with the Dayton Peace Agreement; and, 2) Signature by Bosnia of its Stabilization and Association Agreement (SAA) with the EU. In addition to these conditions, the PIC set several objectives that must be accomplished prior to transition, including:

- Acceptable and sustainable resolution of state property issues;
- Acceptable and sustainable resolution of defense property issues;
- Completion of the Brcko Final Award;
- Fiscal sustainability of Bosnia (promoted through resolution of outstanding Indirect Taxation Authority issues and establishment of a National Fiscal Council);
- Entrenchment of the rule of law (demonstrated through adoption of a National War Crimes Strategy, passage of the Law on Stay and movement of Aliens and Asylum, and adoption of a National Justice Sector Reform Strategy)

U.S. Presses Quint for Contingency Planning on RS

¶3. (C) During a Quint meeting prior to the PIC, DAS DiCarlo stressed that the U.S. hoped to avoid a confrontation with Dodik. Nonetheless, Dodik's rhetoric and actions over the last 20 months, particularly since August 2007, coupled with the newly asserted right to RS self-determination, appeared to be elements of a calculated strategy to eventually achieve an independent RS. With this in mind, the Quint needed to develop strategy for dealing with him. DAS DiCarlo proposed more detailed follow-on discussions after the PIC

about possible measures the Quint countries could take, if necessary, to deter or respond to provocations by Dodik. The UK and Germany supported the proposal and suggested that the HighRep update the options paper he prepared during the crisis over the October 19 measures. DAS DiCarlo informed the Quint that we had already taken the decision to end our technical assistance work with Dodik's Alliance of Independent Social Democrats (SNSD).

Bosnian Leaders: Bosniaks are from Mars, Serbs are from Venus

¶4. (C) Bosnian leaders' presentations before the PIC reflected the vast differences between the ethnic groups over how they viewed the current situation and how to move forward. Bosnian Serbs (Tri-Presidency member Radmanovic, PM Spiric, PDP party President Ivanic, and RS PM Dodik) said OHR now was an obstacle to Bosnia's political maturity and should be abolished. Spiric went on at length to describe the "accomplishments" of the Council of Ministers over the preceding weeks, noting it had submitted legislation to parliament on police reform, pharmaceuticals and had approved a movable defense property agreement. (Note: Virtually all the items mentioned by Spiric still require subsequent approval by other administrative or legislative bodies in Bosnia. End Note) Dodik played down the February 21 RSNA resolution, which asserted that the RS had the right to self-determination, as a "good answer to radicalization of RS public" following Kosovo's independence. He emphasized that the RS would support Bosnia as long as Bosniaks and Croats are willing to accept the RS within Bosnia.

¶5. (C) Bosniaks (Tri-Presidency member Silajdzic, Minister of Security and Deputy PM Sadovic, and SDA party representative Osmanovic) joined by Croat Tri-Presidency Chairman Komsic, on the contrary, stressed that OHR must continue to play an active interventionist role in Bosnia in order to ensure Dayton's full implementation and counter anti-Dayton behavior, like the RSNA resolution. Osmanovic and Komsic were highly critical at what they characterized as OHR's tepid response to the RSNA resolution and other RS anti-Dayton actions. Silajdzic noted the PIC coincided with

the first anniversary of the International Court of Justice (ICJ) decision in Bosnia v. Serbia and that Serbia still had not surrendered Mladic or Karadzic to The Hague. Bosnian Croat leaders (Finance Minister Vrankic, HDZ President Covic, and HDZ-1990 President and minister of Transport and Communication Ljubic) stressed Croats unequal status within Bosnia. Each argued the importance of constitutional reform and urged that OHR remain open until constitutional reform was completed.

PIC Avoids Direct Criticism of RS Over Self-Determination

¶ 16. (C) During the exchange with members of the Bosnian government and the leaders of the six governing political parties, most PIC members expressed concern about the Republika Srpska National Assembly's (RSNA) resolution asserting an RS right to self-determination, as well as previous Bosniak rhetoric calling for the abolition of the RS. DAS DiCarlo, joined by the UK and Germany, made clear that the RSNA resolution was anti-Dayton, unconstitutional, and unacceptable. The Russians blocked an attempt by several delegations to include similar language in the PIC communique, noting that the RSNA resolution was predictable and understandable following Kosovo's independence. The Russians announced that their delegation had firm instructions "not to accept any language critical of Serbs," including negative references to the RSNA action. Lajcak had opened the PIC by labeling the RSNA resolution "an extremely serious development," but in his bilateral with us prior to the PIC and during the Quint, Lajcak stressed that "unity" was his paramount objective, even if that meant a weaker PIC statement on the RS's recent anti-Dayton actions. As a consequence, the PIC settled on language that avoided specific mention of the RS. Instead the PIC "expresses deep concern with official calls for secession. The PIC strongly emphasizes that under the Dayton Peace Agreement an Entity

has no right to secede," coupled with language expressing concern about "statements calling the existence of entities into question."

War Crimes Issues

¶ 17. (SBU) Principal Deputy High Representative (PDHR) Raffi Gregorian reported Bosnia cooperates with the International Criminal Tribunal for the former Yugoslavia (ICTY) on specific requests, but that local authorities still failed to demonstrate initiative. The PDHR highlighted progress made addressing Srebrenica-related issues as well as steps taken by OHR and the Bosnian authorities to prevent members of the Karadzic family from supporting ICTY-indictee Radovan Karadzic. The PDHR expressed "serious concern" about the draft Law on Amendments to the Criminal Procedural Code (CPC), which was recently adopted by the Council of Ministers. One change to the CPC would delete the grounds for detention that is used in almost every case transferred from ICTY to Bosnia, noting that if adopted, it could lead to the release of currently detained persons transferred from ICTY. In addition, another proposed change to the CPC might prolong the criminal procedure for additional years and exhaust the resources of the State Court because, according to PDHR, 19 judges would be required to hear just one case. (Note: The EQSSY has raised these issues with the CoM and other Bosnian government officials. We will urge Bosnian parliamentarians to strike these provisions during their consideration of the legislation. End Note)

Brcko: Full Implementation of the Final Award

¶ 18. (SBU) The PDHR reported that he had resumed his consultations with political party leaders regarding the measures required to certify that the conditions of the Brcko Final Award had been met. These included passage of three constitutional amendments and a law regulating Brcko's institutional relations with the state. The amendments would

1) insert into the constitution the fact and definition of Brcko; 2) provide a constitutional basis for the law, and; 3) provide Brcko with access to the Constitutional Court as a direct appellant. PDHR stressed that the amendments were all technical in nature. (Note: Both the amendments and the law were prepared in close consultation with the U.S. End Note) PDHR reported that his consultations had been encouraging, adding that the intention was to have the Presidency serve as the proponent for the amendments and the law. That said, PDHR warned that the process of completing implementation of the Final Award could easily become hostage to the political agendas of Bosnia's political parties.

Comment

19. (C) Dodik's presentation to the PIC was subdued compared to his pre-PIC rhetoric, but he returned to pre-PIC form in a February 28 interview with Radio-Television Republika Srpska (RTS) challenging the international community's authority and threatening secession if certain conditions were not met.

In responding to questions about OHR, Dodik said that "no Bonn Powers are possible," warning that if they were employed, "we will go all the way in opposing them." Dodik also stressed that the RS would "not want to cooperate on any reform created by the OHR." Dodik also called upon Bosniaks and Croats to "recognize" the RS by supporting the SNSD-proposed Declaration of Responsibility" (Ref C) and labeled Bosnia an "obstacle" to the further economic development of the RS. Dodik warned, "If they do not want to recognize us, and if they continue making our development impossible, the time will show that the path the RS has possibly taken (sic) - and that is self-determination to secession - is the only realistic path." Finally, Dodik cited the communique language on the RSNA resolution as evidence that the PIC supported it, arguing, "One should notice that in certain previous situations the Peace Implementation Council would certainly ask for abolition of such documents, but this time they were not able to do so

because we were realistic, because the Resolution was based on realities, on facts." Dodik's comments suggest that another confrontation between the RS and the international community over Dayton looms in the near future.

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